

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

In re:

BARFLY VENTURES, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 20-01947-JWB

(Jointly Administered)

**FOURTH ENTERPRISES, LLC (F/K/A HOTSCHEDULES)'S SUPPLEMENT TO ITS
LIMITED OBJECTION TO NOTICE OF ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Fourth Enterprises, LLC (f/k/a HotSchedules) ("HotSchedules") files this Supplement (the "Supplement") to its Limited Objection to Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases (the "Limited Objection") to the alleged cure amount set forth in the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases [Docket No. 198] (the "Cure Notice") served upon HotSchedules by the Debtors, and in support thereof would show as follows:

I. BACKGROUND

1. On June 3, 2020 (the "Petition Date"), Barfly Ventures, LLC and its affiliated entities¹ (collectively, the "Debtors") commenced these Chapter 11 cases by filing voluntary petitions under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their affairs as debtors-in-possession under 11 U.S.C §§ 1107 and 1108.

¹ The Debtors are: Barfly Ventures, LLC (8379), Barfly Management, LLC (6274), 9 Volt, LLC (d/b/a HopCat)(1129), 50 Amp Fuse, LLC (d/b/a Stella's Lounge)(3684), GRBC Holdings, LLC (d/b/a Grand Raids Brewing Company)(2130), E L Brewpub, LLC (d/b/a HopCat East Lansing)(5334), HopCat-Ann Arbor, LLC (5229), HopCat-Chicago, LLC (7552), HopCat-Concessions, LLC (2597), HopCat-Detroit, LLC (8519), HopCat-GR Beltline, LLC (9149), HopCat-Holland, LLC (7132), HopCat-Indianapolis, LLC (d/b/a HopCat-Broad Ripple)(7970), HopCat-Kalamazoo, LLC (8992), HopCat-Kansas City, LLC (d/b/a HopCat-KC, LLC and Tikicat)(6242), HopCat-Lexington, LLC (6748), HopCat-Lincoln, LLC (2999), HopCat-Louisville, LLC (0252), HopCat-Madison, LLC (9108), HopCat-Minneapolis, LLC (8622), HopCat-Port St. Lucie, LLC (0616), HopCat-Royal Oak, LLC (1935), HopCat-St. Louis, LLC (6994), Luck of the Irish, LLC (d/b/a The Waldron Public House, LLC and McFadden's Restaurant Saloon)(4255).

2. On July 24, 2020, the Debtors filed the Cure Notice, including the amounts the Debtors believe were required to cure all defaults then existing under such contracts to be assumed.

3. The Debtors indicated in the Cure Notice that they intend to assume and assign certain of the Debtors' executory contract with HotSchedules (the "Proposed Assumed Contract"), as part of the 363 sales process.

4. Pursuant to the Cure Notice, the Debtors identified \$8,046.40 as the amount which it alleges to be owing to HotSchedules under the Proposed Assumed Contract (the "Proposed Cure Amount").

5. On August 6, 2020, HotSchedules filed the Limited Objection and asserted a total cure amount of \$31,690.35. A hearing on the Limited Objection was originally scheduled for August 27, 2020, [Doc. No. 237], but was reset to September 15, 2020, [Doc. No. 285].

6. Since the filing of the Limited Objection, HotSchedules has provided additional software and services to Debtors resulting in an additional \$8,804.67 that remain due and owing. A true and correct copy of the corresponding invoice supporting this additional amount is attached hereto as **Exhibit A**.

7. HotSchedules agrees to the assumption of Proposed Assumed Contract with the Debtors subject to finding out what entity is the Successful Bidder at the 363 sale and if such Successful Bidder can provide adequate assurance of future performance; however, HotSchedules disputes the Proposed Cure Amount in the Cure Notice. HotSchedules' books and records reflect a total cure amount of \$40,495.02. The Proposed Cure Amount is less than what is actually owed under the Proposed Assumed Contract.

II. OBJECTION TO CURE AMOUNT

8. HotSchedules entered into an agreement with Debtor Barfly Ventures, LLC (the “HotSchedules Contract”) in which HotSchedules provides certain software and services as identified in the HotSchedules Contract. Accordingly, HotSchedules files this Supplement objecting to the Proposed Cure Amount set forth in the Cure Notice.

9. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors must cure any defaults under the HotSchedules Contract in connection with any proposed assumption, as well as provide adequate assurance of future performance. In this case, Debtors’ Proposed Cure Amount of \$8,046.40 fails to cure the existing defaults of the HotSchedules Contract, as is required under Section 365 prior to assumption.

10. As of the date of this Supplement, the correct cure amount is \$40,495.02 for prepetition and postpetition payment defaults under the HotSchedules Contract. As a result, under 11 U.S.C. § 365(b)(1)(A), in order to assume the HotSchedules Contract, HotSchedules must receive a cure payment of at least \$40,495.02. Otherwise, the HotSchedules Contract cannot be assumed pursuant to Section 365.

11. HotSchedules also objects to the assumption and assignment of its contract insofar as any additional postpetition performance by HotSchedules of any contract to be assumed may give rise to additional accounts receivable that, as of the prospective time of assumption and assignment, may be due or past-due and properly included in the Cure Amount.

12. HotSchedules reserves the right to object to the assumption and assignment of the HotSchedules Contract to the Stalking Horse Bidder or the Successful Bidder until such time as the Stalking Horse or the Successful Bidder provides adequate assurance of future performance as is required by Section 365(b)(1) of the Bankruptcy Code.

WHEREFORE, HotSchedules prays (i) that the cure amount set forth in the Cure Notice be corrected to reflect the correct prepetition and postpetition cure amount of \$40,495.02, which represents both prepetition and postpetition amounts due and owing under the HotSchedules Contract as of the date of the filing of this Supplement; (ii) that HotSchedules be paid a cure payment of \$40,495.02 in connection with the assumption and assignment of the HotSchedules Contract; and (iii) that HotSchedules be awarded such other and further relief to which it may be justly entitled at law or in equity.

Dated: September 10, 2020

Respectfully submitted,

CLARK HILL PLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 10, 2020, a true and correct copy of the Supplement to the Limited Objection to Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases was filed using the Court's CM/ECF system, which system will serve the Supplement upon all parties requesting service via ECF notification. In addition, the undersigned certifies that the Limited Objection was served by electronic mail upon (i) counsel to the Debtors (John Lucas at jlucas@pszjlaw.com and Jason Rosell at jrosell@pszjlaw.com); (ii) counsel to the Committee (Michael Brandess at mbrandess@sfgh.com); and (iii) counsel to the Administrative Agent (Nathan Gimpel at nathangimpel@paulhastings.com).

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